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APPLICATION OF LCRA
TRANSMISSION SERVICES
CORPORATION TO AMEND ITS
CERTIFICATE OF CONVENIENCE
AND NECESSITY FOR THE PROPOSED
LEANDER TO ROUND ROCK 138-KV
TRANSMISSION LINE PROJECT IN
WILLIAMSON COUNTY, TEXAS

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PUBLIC UTILITY COMMISSION
FILING CLERK
BEFORE THE STATE OFFICE

OF

ADMINISTRATIVE HEARINGS

**BURLESON RANCH AND LAGMANSON'S
MOTION TO COMPEL DISCOVERY RESPONSES FROM
LEANDER INDEPENDENT SCHOOL DISTRICT**

Pursuant to Sections 22.141-145 of the Procedural Rules of the Public Utility Commission of Texas ("Commission" or "PUC"), in particular § 22.144(e), Mary Frances Burleson Roberts, Burleson Ranches, LTD, MFBRGP LLC, John W. Roberts, Frank B. Roberts, Mary Roberts Ortiz, Russell Austin Burleson, and Markus Lagmanson ("Burleson Ranch and Lagmanson" or "Burleson Ranch") files this its Motion to Compel Discovery Responses to its First Request for Information ("RFI") to Leander Independent School District ("LISD"). This motion is timely filed on or before November 1, 2016.

I. Relevant Procedural Background

On September 30, 2016, Burleson Ranch filed and served on LISD its First RFI. Counsel for Burleson Ranch and LISD conferred on a few of Burleson Ranch's RFIs to LISD, and were able to reach agreement on all but one of the questions and responses. With respect to RFI 1-68 both parties made reasonable efforts to resolve LISD's disputes, but were not able to reach an agreement. On October 25, 2016, LISD filed its objections to Burleson Ranch's First RFI ("Objections").

II. LISD's Objections

LISD makes two "objections".¹ LISD files its Objections because 1) it believes it has already complied with the RFI because a) it alleges the information is publically available on the

¹ LISD does not make a relevance objection to this RFI, 1-68. Therefore, Burleson Ranch does not address such.

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Internet, or because b) the requestor failed to define a “term” in the RFI², or 2) if Your Honors find that LISD has not complied, the information sought is protected because “such information is confidential pursuant to the Texas Homeland Security Act (the “HSA”)”.³

III. Motion to Compel

First, and foremost, if the responsive information is confidential as LISD claims on page 3 of its Objections, then it cannot be “derived or ascertained from local public records”, as LISD asserts on page 1 of its Objections (and its “response” to the RFI). Therefore, LISD cannot have complied with responding to the RFI under its own theory. For this reason alone, Your Honors should order LISD to compel with responding to the RFI by providing the requested information pursuant to the Protective Order.

However, Burleson Ranch will address each of the assertions LISD raises for the sake of argument. One, LISD had not complied with the RFI as it asserts because the information sought is not available through Google Earth aerial images as LISD alleges. Two, the so called “term” LISD alleges Burleson Ranch did not define in the RFI is not required to be defined, and the term at issue is the *exact* term used by LISD in its testimony, which is why the term was incorporated into the RFI, and therefore LISD cannot claim it does not understand the meaning of the term. Three, whether the information sought is confidential is not objectionable. Like all other non-privileged confidential information, LISD should have already provided any confidential responsive information pursuant to the Protective Order entered in this case.

Burleson Ranch and Lagmanson propounded the following RFI to which LISD objects:

1-68 Please provide a copy of the building and site layout for each of LISD’s schools.

A. Information Is Not Publicly Available

First, contrary to LISD’s own assertion in its same pleading LISD claims the information is publically available by using the addresses of each school, plugging it into Google Earth, and voilà, the aerial images will provide the requested data.⁴ At any given address, Google Earth does not provide labels for, or distinguish between, structures or roadways, such as school

² Objections at 1-2.

³ *Id.* at 2-3.

⁴ *Id.* at 2.

buildings, maintenance houses, drop-off and pick-up lanes. Its aerials do not identify what type(s) of building(s) are at each site – whether it is an administrative building, a facilities building, or an elementary school versus a high school, for instance. Further, the aerial images do not show what, if any, type(s) of transmission facilities are on or near each of the LISD properties. Buildings and site layouts for LISD properties, according to LISD’s own exhibit, also identifies transmission line easements and rights-of-way. Google Earth does not reveal easements or rights-of-way. Finally, it would be highly speculative for any such assumptions to be made. Even if it were possible to attempt to identify what school and transmission structures exist on LISD property from some of the Google Earth aerial images, it would take an enormous amount of hearing time to confirm such locations through LISD’s witness.

B. Term is directly from LISD’s Testimony

LISD also argues “The term ‘building and site layout’ is not defined in the request”.⁵ First, the rules do not require a term to be defined. Second, the term is not vague, and if it is not clear to LISD, it should have conducted good faith negotiations to inquire what the meaning might be. Most importantly, the term “building and site layout” comes directly from LISD’s own pre-filed written direct testimony.

For example, included in both Messrs. Jimmy Disler’s and Mark McNeal’s testimonies at Exhibit A is a draft building and site layout of LISD property along CR 175 and Highway 2243 dated September 9, 2016. Specifically, on the face of Exhibit A in both testimonies it states:

**DRAFT – BUILDINGS AND SITE
LAYOUT ARE SUBJECT TO CHANGE –
THIS PLAN IS BASED UPON THE 2016
SCHOOL CONFIGURATIONS AND WILL BE
REVISED/UPDATED IN THE FUTURE
WHEN DESIGN IS AUTHORIZED BY THE
SCHOOL BOARD. (Emphasis added.)**

To the extent available, confidential or not, Burleson Ranch seeks the building and site layouts for LISD properties as the term is used by LISD in this proceeding.

⁵ Objections at 2.

C. Confidential Information Must Not Be Withheld

In a last resort, LISD pleads that if Your Honors do not buy its previous arguments, at least find that the requested information should not be produced because it is confidential.⁶ This request lacks merit. As with many contested Public Utility Commission of Texas proceedings before the State Office of Administrative Hearings, the Administrative Law Judge (“ALJ”) or Judges issue a Protective Order, because these cases can, and often do, involve confidential information. Similarly, these cases involve confidential information regarding homeland security, like the highly-sensitive data concerning the reliability of the Electric Reliability Council of Texas (“ERCOT”) grid. This is further evidence by P.U.C. Proc. R. 22.142(c) which provides for the issuance of a protective order by a presiding officer to govern the production of confidential information, *inter alia*.

In this case, LCRA TSC filed its Motion for Entry of Protective Order on August 9, 2016, and the ALJs granted the motion and entered the Protective Order on August 16, 2016.⁷ The undersigned counsel explained this process to counsel for LISD. Further, the undersigned counsel communicated to LISD’s counsel that she has executed both levels of the Protective Order Certifications which are in LCRA TSC’s records and can easily be provided to LISD’s counsel.

Burleson Ranch does not dispute (nor agree) that the requested information in RFI 1-68 is confidential. Burleson Ranch simply requested that the information can be provided pursuant to the Protective Order.

IV. Conclusion

Given the proximity to the hearing on the merits, and pursuant to P.U.C. Proc. R. 22.144(e) which gives the presiding officers the ability to rule on a motion to compel based on written pleadings without additional argument, Burleson Ranch respectfully requests an expeditious ruling on this its motion to compel. Furthermore, since P.U.C. Proc. R. 22.142(c) provides that any documents produced under the protective order are not determinative of whether the information is confidential, Burleson Ranch would not object if Your Honors’ Order

⁶ *Id.*

⁷ SOAH Order No. 5 at 2.

compelling LISD to produce the responsive documents are limited to production under the provisions of Protective Order.

WHEREFORE, PREMISES CONSIDERED, Burleson Ranch and Lagmanson respectfully request Your Honors to grant its motion to compel Leander Independent School District to produce responses to the pending request. Further, Burleson Ranch and Lagmanson respectfully request Your Honors to order LISD to immediately provide the confidential responses pursuant to the entered Protective Order, upon the issuance of the order granting this motion and for such other and further relief to which Burleson Ranch and Lagmanson are justly entitled.

Respectfully submitted,



Shannon K. McClendon
Attorney & Counselor at Law
State Bar No. 13412500
shannonk@webmclaw.com
1302 Overland Stage Road, Suite 200
Dripping Springs, Texas 78620
(512) 264-3536 telephone
(512) 852-4633 facsimile

**ATTORNEYS FOR BURLESON RANCH AND
LAGMANSON**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on counsel for Leander Independent School District by facsimile and/or e-mail on this 1st day of November 2016.


